

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

20

-----X
JOHN KOGUT,

★ NOV 29 2012 ★

Plaintiff, LONG ISLAND OFFICE

-against-

VERDICT SHEET

06-CV-6695 (JS) (WDW)
(LEAD CASE)

THE COUNTY OF NASSAU, POLICE
COMMISSIONER DONALD KANE, POLICE
COMMISSIONER WILLIAM J. WILLETT (2005),
POLICE COMMISSIONER JAMES LAWRENCE,
DETECTIVE SEAN SPILLANE (HEAD OF HOMICIDE
1985), DETECTIVE DENNIS FARRELL (HEAD OF
HOMICIDE 2005), CAROLANN HESSEMAN, AS
EXECUTRIX FOR THE ESTATE OF JOSEPH VOLPE,
DETECTIVE ROBERT DEMPSEY, DETECTIVE ALBERT
MARTINO, DETECTIVE WAYNE BIRDSALL,
DETECTIVE MILTON G. GRUBER, DETECTIVE
CHARLES FRAAS, DETECTIVE FRANK SIRIANNI,
DETECTIVE HARRY WALTMAN, P.O. MICHAEL
CONNAUGHTON, P.O. WILLIAM DIEHL, and
JOHN DOES 1-5,

Defendants.

-----X
JOHN RESTIVO, DENNIS HALSTEAD,
MELISSA LULLO, JASON HALSTEAD,
HEATHER HALSTEAD, and TAYLOR
HALSTEAD,

Plaintiffs,

06-CV-6720 (JS) (WDW)
(MEMBER CASE)

- against -

NASSAU COUNTY, CAROLANN HESSMAN, AS
EXECUTRIX FOR THE ESTATE OF JOSEPH VOLPE,
in his individual capacity, ROBERT DEMPSEY,
in his individual capacity, FRANK SIRIANNI,
in his individual capacity, MILTON GRUBER,
in his individual capacity, HARRY WALTMAN
in his individual capacity, ALBERT MARTINO,
in his individual capacity, CHARLIE FRAAS,
in his individual capacity, THOMAS ALLEN
in his individual capacity, RICHARD BRUSA,
in his individual capacity, VINCENT DONNELLY,

in his individual capacity, MICHAEL
CONNAUGHTON, in his individual capacity,
WAYNE BIRDSALL, in his individual capacity,
WILLIAM DIEHL, in his individual capacity,
JACK SHARKEY, in his individual capacity,
DANIEL PERRINO, in his individual capacity,
ANTHONY KOZIER, in his individual capacity,
Detective Sergeant CAMPBELL, (Shield #48),
in his individual capacity, SEAN SPILLANE,
in his individual capacity, RICHARD ROE
SUPERVISORS #1-10, in their individual
capacities,

Defendants.

-----X

Instructions: You must read each question below carefully and answer all of the questions including all subparts of each question. Your decision on each question or subpart must be unanimous.

1) Unconstitutional Deprivation of Liberty without Due Process and the Right to a Fair Trial with regard to John Kogut.

For each of the following defendants, do you find by a preponderance of the evidence that the defendant denied plaintiff John Kogut his constitutional rights to due process and right to a fair trial either by fabricating evidence or by withholding material exculpatory or impeachment evidence?

Joseph Volpe	Yes: ____	No: <u>X</u>
Robert Dempsey	Yes: ____	No: <u>X</u>
Frank Sirianni	Yes: ____	No: <u>X</u>
Thomas Allen	Yes: ____	No: <u>X</u>
Wayne Birdsall	Yes: ____	No: <u>X</u>
Charles Fraas	Yes: ____	No: <u>X</u>

2) Unconstitutional Deprivation of Liberty without Due Process and the Right to a Fair Trial with regard to John Restivo.

For each of the following defendants, do you find by a preponderance of the evidence that the defendant denied plaintiff John Restivo his constitutional rights to due process and right to a fair trial either by fabricating evidence or by withholding material exculpatory or impeachment evidence?

Joseph Volpe	Yes: <u> </u>	No: <u>X</u>
Robert Dempsey	Yes: <u> </u>	No: <u>X</u>
Frank Sirianni	Yes: <u> </u>	No: <u>X</u>
Thomas Allen	Yes: <u> </u>	No: <u>X</u>
Wayne Birdsall	Yes: <u> </u>	No: <u>X</u>
Charles Fraas	Yes: <u> </u>	No: <u>X</u>

3) Unconstitutional Deprivation of Liberty without Due Process and the Right to a Fair Trial with regard to Dennis Halstead.

For each of the following defendants, do you find by a preponderance of the evidence that the defendant denied plaintiff Dennis Halstead his constitutional rights to due process and right to a fair trial either by fabricating evidence or by withholding material exculpatory or impeachment evidence?

Joseph Volpe	Yes: <u> </u>	No: <u>X</u>
Robert Dempsey	Yes: <u> </u>	No: <u>X</u>
Frank Sirianni	Yes: <u> </u>	No: <u>X</u>
Thomas Allen	Yes: <u> </u>	No: <u>X</u>
Wayne Birdsall	Yes: <u> </u>	No: <u>X</u>
Charles Fraas	Yes: <u> </u>	No: <u>X</u>

4) Malicious Prosecution with regard to John Kogut -- 1985 to 1986

For each of the following defendants, do you find by a preponderance of the evidence that the defendant maliciously prosecuted plaintiff John Kogut?

Joseph Volpe	Yes: <u> </u>	No: <u>X</u>
Robert Dempsey	Yes: <u> </u>	No: <u>X</u>
Frank Sirianni	Yes: <u> </u>	No: <u>X</u>
Thomas Allen	Yes: <u> </u>	No: <u>X</u>
Wayne Birdsall	Yes: <u> </u>	No: <u>X</u>
Charles Fraas	Yes: <u> </u>	No: <u>X</u>

5) Malicious Prosecution with regard to John Kogut - 2005

For each of the following defendants, do you find by a preponderance of the evidence that the defendant maliciously prosecuted plaintiff John Kogut?

Joseph Volpe	Yes: <u> </u>	No: <u>X</u>
Robert Dempsey	Yes: <u> </u>	No: <u>X</u>
Frank Sirianni	Yes: <u> </u>	No: <u>X</u>
Thomas Allen	Yes: <u> </u>	No: <u>X</u>
Wayne Birdsall	Yes: <u> </u>	No: <u>X</u>
Charles Fraas	Yes: <u> </u>	No: <u>X</u>
Dennis Farrell	Yes: <u> </u>	No: <u>X</u>

6) Malicious Prosecution with regard to John Restivo

For each of the following defendants, do you find by a preponderance of the evidence that the defendant maliciously prosecuted plaintiff John Restivo?

Joseph Volpe	Yes: <u> </u>	No: <u>X</u>
Robert Dempsey	Yes: <u> </u>	No: <u>X</u>
Frank Sirianni	Yes: <u> </u>	No: <u>X</u>
Thomas Allen	Yes: <u> </u>	No: <u>X</u>
Wayne Birdsall	Yes: <u> </u>	No: <u>X</u>
Charles Fraas	Yes: <u> </u>	No: <u>X</u>

7) Malicious Prosecution with regard to Dennis Halstead

For each of the following defendants, do you find by a preponderance of the evidence that the defendant maliciously prosecuted plaintiff Dennis Halstead?

Joseph Volpe	Yes: <u> </u>	No: <u>X</u>
Robert Dempsey	Yes: <u> </u>	No: <u>X</u>
Frank Sirianni	Yes: <u> </u>	No: <u>X</u>
Thomas Allen	Yes: <u> </u>	No: <u>X</u>
Wayne Birdsall	Yes: <u> </u>	No: <u>X</u>
Charles Fraas	Yes: <u> </u>	No: <u>X</u>

8) Failure to Provide Constitutionally Adequate Supervision of Homicide Investigation

Do you find by a preponderance of the evidence that defendant Sean Spillane while supervising Volpe, Dempsey and the other defendant police officers:

- a) participated directly in a constitutional violation against John Restivo and Dennis Halstead?

Yes: ____ No: X

AND/OR

- b) created a policy or custom under which unconstitutional practices occurred?

Yes: X No: ____

If you answered "NO" to Question 8(b), DO NOT ANSWER Question 8(c). If you answered "YES" to Question 8(b), please proceed to Question 8(c).

c) Would a reasonable officer in defendant Spillane's position as the Commanding Officer of the Homicide Bureau in 1985 have understood his conduct to be unconstitutional?

Yes: ____ No: X

9) Respondeat Superior Claim: John Kogut

Do you find by a preponderance of the evidence that the defendant Nassau County is responsible for the acts of defendant Spillane in failing to supervise?

Yes: X No:

If your answer to Question 9 is "YES", then please answer Question 10. If your answer to Question 9 is "NO" please have the foreperson sign and date this verdict sheet and advise the Court by note that you have reached a verdict and are ready to return to the courtroom to announce your verdict.

10) Do you find that a failure to supervise caused an injury to Plaintiff Kogut?

Yes: No: X

Foreperson, please sign and date this Verdict Sheet and advise the Court by note that you have reached a verdict and are ready to return to the courtroom to announce your verdict.

Diana Mullady
FOREPERSON

Dated: November 29, 2012
Central Islip, NY

POLYGRAPH SECTION - POLICE DEPARTMENT, COUNTY OF NASSAU, NEW YORK

CONSENT TO TAKE A POLYGRAPH EXAMINATION

RE: D.D. # H04. #2222-84

Sheet # 3

Pg. Ex. # 111-85DATE 3/25/85

I, John Joseph Vogut,
residing at 161 Traymore Blvd,

of my own free will, voluntarily and without being forced, do hereby consent and agree to submit to a polygraph examination, more commonly known as a "lie detector" test, being fully aware and understanding that I do not have to take this test and that once it is started, it will be stopped or discontinued at any time, should I wish to stop or leave.

Further, I have been informed by the polygraphist that I have the right to remain silent and that anything that I say may be used as evidence against me in court although the results of this examination, that is, the polygraphist's opinion resulting from this examination, will not be used as evidence against me in court.

Also, I have the right to talk to a lawyer before taking this test or before answering any questions, or to have an attorney present at any time. Further, if I can not afford to hire a lawyer, one will be furnished to me free of charge and I have the right to remain silent until I have had the opportunity of consulting with an attorney.

Having been informed of these rights, having had them read and explained to me and understanding these rights, I now wish to take the polygraph examination of my own free will, without consulting with an attorney at this time.

NASSAU COUNTY

000401

WITNESS.

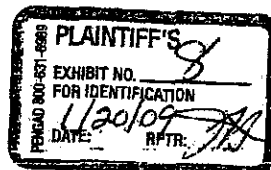
P. W. Durb
James J. Durb

John J. Vogut
(SIGNATURE)

STARTING TIME: 6.44 PMTIME FINISHED: 9.26 PM

COURT EXHIBIT

18



POLYGRAPH SECTION - POLICE DEPARTMENT, COUNTY OF NASSAU

POLYGRAPH EXAM BACKGROUND FORM

ST: 1858

Sheet # 4

EXAM DATE: 3/25/85 D.D.# None # 2222-82 P.C.# 200-08 P.E.# 111-85
 NAME: John T. Koert ADDRESS: 161 TRAYMORE BLVD AGE: 21
 BIRTH DATE: 11-29-63 NICKNAME: None BIRTH PLACE: Rockaway, N.Y.
 FATHER (Living) doesn't know (Dead) + RELIGION: R/C PRACTICE: +
 DATE (If Deceased) + REL. TRAINING AS CHILD: +
 OCCUPATION: doesn't know MOST RESPECTED: myself LEAST: the boss
 HOW DO YOU GET ALONG? like a rain NO. YEARS EDUCATION: 10th grade
 MOTHER (Living) doesn't know (Dead) + H.S. GRAD: — TRADE SCHOOL: —
 DATE (If Deceased) + COLLEGE: — MAJOR: —
 OCCUPATION: doesn't know LIVE N.Y. — NASSAU: Thinks OTHER: —
 HOW DO YOU GET ALONG? parents don't know AVERAGE: 12-13 years SLEEP: 6-7 FOOD: anything ALCOHOL: any
 RAISED BY: many families LAST: 6 SMOKE: + POT: +
 LIVE WITH PARENTS: — NARCOTICS (Use): pot (Try): all
 MARRIED: — DATE: — HABIT: stashed HASH/PILLS/HEROIN: any
 SEPARATED/DIVORCED: — UNDER INFLUENCE TROUBLE: most of my career
 ALIMONY: — ENGAGED: + SERIOUS MEDICAL PROBLEMS: —
 WIFE'S OCCUPATION: N/A (Heart): good (Emphysema): — PREGNANT: —
 HOW DO YOU GET ALONG? N/A (Asthma): — (Lung Prob.): —
 COMMON LAW: + (Epilepsy): — (Blackouts): N/A
 GIRL/BOY FRIEND: + (Lose Consciousness): + (Nerves): any
 GO OUT MUCH: once - 2 or 5 a week (Head Ringing/Buzzing): — (Ulcers): —
 CHILDREN (Boys) AGES: — ANY PILLS OR R.: — TRANQUILIZERS: —
 (Girls) AGES: — LAST 8 hrs. read the AM Last 24: —
 CHILDREN AT HOME: doesn't know LAST TO M.D.: new from WHY? get a kick
 EMPLOYED: Frank Bertini CONTEMPLATE SUICIDE: — ATTEMPT: —
 POSITION: bondage PSYCHIATRIST/PSYCHOLOGIST: think anyone
 HOW LONG? 2 weeks SALARY: 200⁰⁰ and EVER THINK YOU NEEDED TO SEE ONE: —
 THINK OF WORK: good PAY: good OBSERVATION: —
 BOSS: good OTHER INCOME: None MENTAL INSTITUTE: —
 LAST JOB: man - like man LOANS/DEBTS (Amts.): 1,500⁰⁰ WHERE: year
 REASON: paid off WHY? + BEHIND: lean
 MILITARY: — BRANCH: — KIND OF GAMBLING: Cards
 DATES: — DISCIPLINARY: — HOBBIES: sports PASTIMES: sports
 DISCHARGE: — HOW FEEL ABOUT TEST? OK EVER TAKE: —
 ARRESTED: + FINGERPRINTED: + WHY ARE YOU TAKING IT? give my
 NO. TIMES: 7-8 CHARGE: burglary ORGANIZATIONS: —
 TRAFFIC: — MOST TROUBLE (J.D.) Myself BEST THING: my job WORST: lost sister
 WARPANTS: — PAROLE/PROB: 1575 NASSAU COUNTY
 POLICE R... WHAT ELSE SHOULD I KNOW ABOUT YOU?
 FI: 000402

POLYGRAPH SECTION
POLICE DEPARTMENT
COUNTY OF NASSAU

Date: 3/25/85

P.E. #: 161 1985

T # 200 29 84

NAME: John Koyat

POLYGRAPH EXAM GESTURE & CHECK LIST

DATE: 3/25/85

	TRUTH	LYING	INDEF.	GESTURES
CASE FACTS:				LOOKS AWAY: <input checked="" type="checkbox"/>
ARRIVAL:				LOOKS UP/DOWN: <input checked="" type="checkbox"/>
KNOW WHY/DHT3:				WETS THE LIPS: <input checked="" type="checkbox"/>
PERMISSION FORM:				SWALLOWS: <input checked="" type="checkbox"/>
COMMENTS:				ASKS FOR H2O: <input checked="" type="checkbox"/>
BACKGROUND FORM:				BITES THE LIPS: <input checked="" type="checkbox"/>
OBSERVATION:				BITES NAILS: <input checked="" type="checkbox"/>
GESTURES: (see rt. col.)				MOVES/TAPS HANDS: <input checked="" type="checkbox"/>
HEART & YOU:				SCRATCHES HEAD: <input checked="" type="checkbox"/>
KNOWLEDGE SUSPICION:				MOVES ELBOWS: <input checked="" type="checkbox"/>
KNOW TRUTH/ G.C.:				CROSSES LEGS: <input checked="" type="checkbox"/>
THINK or PLAN:				MOVES/SHUFFLES FEET: <input checked="" type="checkbox"/>
F.P./BORROW/INVENTORY:				TAPS FEET: <input checked="" type="checkbox"/>
KNOWN LIE (KIQ 6 & 10):				LINT PICKER: <input checked="" type="checkbox"/>
T # 1:				BLUSHES: <input checked="" type="checkbox"/>
T # 2:				EYES TWITCH: <input checked="" type="checkbox"/>
T # 3:				HANDS SWEATING: <input checked="" type="checkbox"/>
T # 4:				VOICE SHIFTS: <input checked="" type="checkbox"/>
PEAK OF TENSIONS:				FORCED LAUGHTER: <input checked="" type="checkbox"/>
QUESTIONS REMEMBERED:				VERY UNEASY: <input checked="" type="checkbox"/>
QUESTIONS TROUBLED:				UNCOOPERATIVE: <input checked="" type="checkbox"/>
ADD'L.K.L. ADMISSIONS:				TAKES OFF ATTACH: <input checked="" type="checkbox"/>
WHAT SHOW:				JUMPS OUT OF SEAT: <input checked="" type="checkbox"/>
OTHER STATEMENTS:				AFTER TEST: <input checked="" type="checkbox"/>
INTERROGATION:				OTHER: <input checked="" type="checkbox"/>
PG-EXAM EXPLANATION:				
MISCELLANEOUS:				
FINAL OPINION:	(T)	(L)	(I)	

M-L-T-2/11-86 (AC BLS HQ, 1-1-86)

000403 Nassau County

POLYGRAPH EXAMINATION CARD

SURNAME KOGUT,	FIRST NAME John	INITIAL J.	RE-EXAM YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	EXAMINATION NO. 111-85
ADDRESS 161 Traymore Blvd., Island Park, New York				FILE NO. 200-84
AGE 21	DATE OF BIRTH 11-29-63	PLACE OF BIRTH Rockaway, New York		DETECTIVE DIVISION NO. Hom. # 2222-84
CRIME CLASSIFICATION: HOMICIDE MURDER		DATE OF OCCURRENCE: Body Found Wed., Dec. 5, 1984 1600		<input type="checkbox"/> DEFENDANT <input type="checkbox"/> COMPLAINANT <input type="checkbox"/> OTHER:
SEX: Male	COLOR: White	OCCUPATION: Landscaper		DETECTIVE ASSIGNED: Joseph VOLPE
DATE & TIME EXAMINED: 3-25-85 1844-2126		POLYGRAPHIST(S): Milton G. Gruber		OBSERVERS: M. CONNAUGHTON & DIEHL

OPINION:
EXAM RE: J. KOGUT was afforded a polygraph examination to determine if he had any knowledge of or involvement in the strangulation murder of Theresa FUSCO, age 16 years, who's nude and raped body was found covered with wooden pallets near the LIRR tracks at Park Place and Rocklyn Ave., Lynbrook, New York. J. KOGUT is friendly with two other suspects in this case, John RESTIVO and Dennis HALSTEAD.

OPINION: LYING: J. KOGUT answered several of the relevant crime questions with deceptive (Lying) responses, and stated that he was aware of his breathing responses throughout this examination, which altered some of the chart responses. During an interview with Homicide Squad detectives after this examination, J. KOGUT gave full admission to this murder.

Room 222, Ultrascibe

RE-EXAM:
☐ RECOMMENDED
☐ NOT RECOMMENDED
☒ NOT REQUIRED

POLYGRAPHIST'S SIGNATURE:

Milton G. Gruber
Detective

FOCN 175-475

NASSAU COUNTY

000404

POLYGRAPH WORKSHEET -

POLICE DEPARTMENT COUNTY NASSAU NEW YORK - Since 1971

Note to Investigating Detectives: Please complete this informal worksheet & return it to Polygraph with a copy of the PDCN Form 32, a copy of any applicable statements and a copy of any other pertinent information. This form is intended to assist us to properly formulate our test questions. You need not duplicate any information covered already on the copies you are providing us with, and if you will be accompanying the subject to Headquarters, you may complete this form at that time. Only one form need be submitted per case even if more than one subject is to be tested. Please return to us prior to the date of appointment. Command Post #: 887-9916

YOUR INVESTIGATION CLASSIFICATION: HOMICIDE (Murder)	D.D. No: 5-5201-1984
DAY OF WEEK, DATE & TIME OF OCCURRENCE: MISSING Nov. 11th found about 1600 Wed., Dec. 5, 1984	Homicide SQUAD No: 2222-1984
LOCATION OF OCCURRENCE: 2 WOODEN AREA -- found North side of the LIRR tracks between Park Place and Rocklyn Avenue Inc. V. of LYNEROOK, NY	ANY ARREST No. ASSIGNED?
TYPE PREMISE/DOING BUSINESS AS: 2445	DETECTIVE INVESTIGATING: Joe VOLPE, Homicide
Victim has been missing since Nov. 10th. (2nd seen leaving HOPSKATES where she was killed)	DETECTIVE PRESENT FOR TEST/OBSERVING: Joel MITCHELL, 5th
YOUR COMPLAINANT OR VICTIM & ADDRESS: Theresa FUSCO, P-W-16, H.S. Student of Lynbrook, NY	POLYGRAPH FILE No: 200-of-1984
LOSS w/VALUE and/or VICTIM'S INJURIES: STRANGULATION by best friend face. Victim found nude, her body lying under some wooden pallets, lying face down. A slight amount of decomposition had taken place.	POLYGRAPH EXAM No: 376-of-1984
PLEASE LIST ANY SUSPECTS: Boyfriend for elimination.	POLYGRAPHIST: E. J. Goutin
ANY VEHICLE USED or INVOLVED?: number of 2 white VAN(?)	PLEASE LIST ANY CONFIDENTIAL INFORMATION OR FACTS ABOUT CRIME OF WHICH SUBJECT IS NOT AWARE - FOR POSSIBLE USE IN CONSTRUCTION OF A PEAK-OF-TENSION TEST:
MY WEAPON USED or DISPLAYED?:	3 Rings (2 from one hand & one from the other); a Necklace & a bracelet are all missing from dec'd., along with clothes.
LIST ANY WITNESSES: 2 missing from dec'd.; 2 friends; 1 chain necklace w/ heart; 1 Gold chain w/ unicorn.	This form completed by: ZJK
LIST PERSONS YOU WANT TO BE EXAMINED:	NASSAU COUNTY 000405
1. Matthew WILSON, 16, M-E	3.
2.	4.

BRIEF SYNOPSIS OF YOUR INVESTIGATION and WHY SUBJECT(S) ARE BEING TESTED?:

Victim found by two boys, Andrew TURCI and Marcelo BAEZ, 14, who mtfd. people in the Village Deli. The clerk came out, took a look, and ultimately called the police.

Matthew WILSON met dec'd at HOPSKATES, just prior to start of school. He says he was just friends, ~~she was~~ her side. ~~her family~~ says he was her boyfriend. ~~(he used to see her every Fri. night at HOPSKATES)~~ WILSON claims that a few days ago he heard from a friend of his KANE, who said he had heard a rumor that Theresa had been strangled in Hempstead. He said he heard that she had been with a boyfriend in a white van in Hempstead - another rumor.

MISSING 2 RINGS, 1 GOLD CHAIN WITH HEART, GOLD CHAIN WITH UNICORN
Don't believe she was killed there but in area there

Nov 29

COURT EXHIBIT
19 4:10

We have a
verdict.

Diana Mulady

Pleasants
EXHIBIT #

8 Kogut Polygraph
8A highlighted Polygraph Question
sheet of Kogut

89 Vacatur order

111 Search Warrant for Van
order, Affidavit

477 order to vacate convictions

929 Excerpts of Volpe
memo book

Nov. 29

Diana Mullady

COURT EXHIBIT

17 11:30

COURT EXHIBIT

16 ^{11/29}
10 ⁴⁰

Your Honor

Yesterday Juror #1
said he was using his
home computer to look
up The FBI Web Site + on
Project Innocence, about
confusions

Juror
#5

Foreperson: Diana
Mullady

Nov 29 15 10:15
COURT EXHIBIT

Did Volpe complete
his deposition for the
Defense or did he
pass away first?

Diana Mullady

COURT EXHIBIT

Nov. 29

14

9:50

Q. RE: UNANIMOUS decision

Hypothetical question

If we agree on a couple of questions but cannot agree on others, does it make the entire case a hung trial or are just those few questions we can't agree on a hung trial.

Diana Mullady

COURT EXHIBIT

1:35

13

Nov. 28, 2012

may we please have:

① Plaintiff exhibit 135

② What was Kogut
charged & convicted of
in trial # 1 (1985) &
Trial # 2 (2005),

Diana Mullady

COURT EXHIBIT

11/27

1:30

Nov 27

12

We want to see a picture
of # 19 from TR-11A.

Diana Mulloy

Nov. 27

COURT EXHIBIT
11/27
11 1:20

We want :

- ① Addendum TR 11A
- ② RD 1
- ③ Plaintiff # 18

Diana Mullady

Thank you !

Nov. 26, 2012

Who is Dennis Farrell?

COURT EXHIBIT

10 ^{11/26}
12 ³⁵

~~He is not in the photo~~

He is head of homicide but what
was his role in the 2005 Kogut trial?

Diana Mulloy

COURT EXHIBIT
9 11/26
10⁰⁰

- ① Judge Ort's decision — P 89
P 359
- ② Restivo's statement or interview
- ③ P 477 - Order to Vacate

Diana Mullady

Nov. 21, 2012

We would like:

- 1) to hear the Halstead recording
- 2) records or photo log for picture 169 A-J
- 3) Timeline of the case — calendar of dates.
- 4) Plaintiff Exhibit 107
- 5) Kogut's confession # 63
- 6) Plaintiff's 456 (10/1)
- 7) T R 3
- 8) Exhibit 239
- 9) Video testimony of Frank Myers

COURT EXHIBIT

8 11/21
10⁵⁰

Diana Mullachy

① Picture of van in driveway in front of garage
P 118

COURT EXHIBIT

11/20

7 425

② Pictures of witnesses with names

Diana Mullady

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOHN KOGUT,

Plaintiff,

v.

THE COUNTY OF NASSAU, et al.,

Defendants.

JOHN RESTIVO and DENNIS HALSTEAD,

Plaintiff,

v.

THE COUNTY OF NASSAU, et al.,

Defendants.

COURT EXHIBIT

6

06-CV-6695 (JS)(WDW)

06-CV-6720(JS)(WDW)

STIPULATION

Defendants contend that Theresa Fusco's hairs were left in the blue Ford Econoline van depicted in Plaintiffs' Exhibit 222 on November 10, 1984.


Barry C. Scheck

Debi Cornwall

NEUFELD SCHECK & BRUSTIN, LLP

99 Hudson St., 8th Floor

New York, NY 10013

**Attorneys for plaintiffs John Restivo
and Dennis Halstead**


Paul Casteleiro

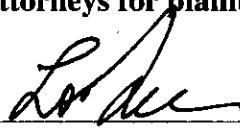
200 Washington St., 5th Fl

Hoboken, NJ 07030

Anthony Grandinette

GRANDINETTE & SERIO, LLP

114 Old Country Rd., Suite 420
Mineola, NY 11501
Attorneys for plaintiff John Kogut

A handwritten signature in black ink, appearing to read 'Lou Freeman', is written over a horizontal line.

Lou Freeman
Lee Ginsberg
Nadjia Limani
Freeman, Nooter & Ginsberg
75 Maiden Lane, Suite 503
New York, New York 10038

Michael Ferguson
Nassau County Attorney's Office
Ralph G. Caso Executive & Legislative
Building
One West Street
Mineola, NY 11501-4820
Attorneys for defendants

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOHN KOGUT,

Plaintiff,

v.

THE COUNTY OF NASSAU, et al.,

Defendants.

JOHN RESTIVO and DENNIS HALSTEAD,

Plaintiff,

v.

THE COUNTY OF NASSAU, et al.,

Defendants.

COURT EXHIBIT

5

06-CV-6695 (JS)(WDW)

06-CV-6720(JS)(WDW)

STIPULATION

Following the discovery of Theresa Fusco's body on December 5, 1984 and prior to the March 26, 1985 interrogation of John Kogut, newspapers reported the following about the crime: (1) the body was located beside the Long Island Railroad tracks in an area on the north side of the tracks between Rockland Avenue and Park Place,¹ (2) the body was found nude and was covered with leaves beneath a wooden pallet,² (3) she had been strangled with a rope, wire, or similar object and had bruises on her neck and torso,^{3 4} (4) and she had been sexually assaulted.⁵


Barry C. Scheck

Debi Cornwall

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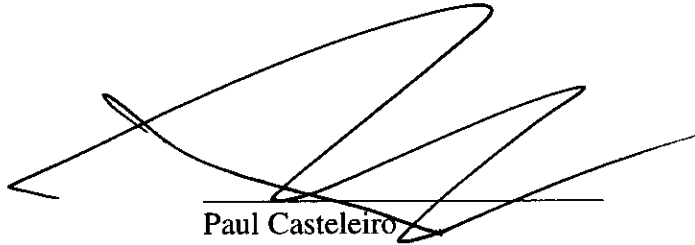
¹ PX 174.

² *Id.*

³ *Id.*

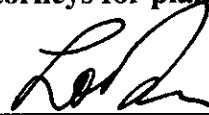
⁴ PX 276.

⁵ Px 174.



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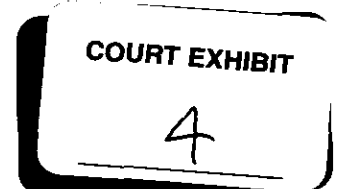
Kogut v. Nassau County, et al., No. 06 CV 6695 (JS)
Restivo & Halstead v. Nassau County, et al., No. 06 CV 6790 (JS)

STIPULATION

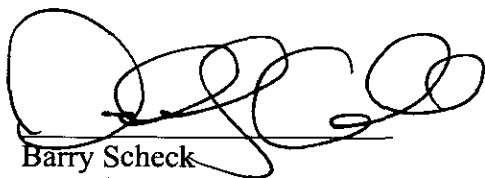
The parties stipulate and agree that, if called to testify, Peter Weinstein would testify as follows:

1. He was the Chief of the Appeals Bureau at the Nassau County District Attorney's Office ("NCDA") from 1991 until 2009.
2. In 1994, when John Restivo, Dennis Halstead and John Kogut made motions for relief from their convictions based on the DNA testing, Mr. Weinstein became involved, along with others at the Nassau County District Attorney's Office, in review of the cases and in discussions about what response should be made to the motions for relief.
3. The Appeals Bureau that Mr. Weinstein oversaw was also responsible for responding to requests for information pursuant to the Freedom of Information Law. While John Restivo, Dennis Halstead and John Kogut were still in prison, their lawyers made many such requests for information.
4. To the best of Mr. Weinstein's knowledge, this information about the French car/stripped jeans lead was never disclosed by the police to the prosecutors.
5. In 2003, Denise Pavlides, who was working for Mr. Weinstein, went to either the police department or the medical examiner's office with lawyers for Mr. Restivo and Mr. Halstead to look for evidence in response to Freedom of Information Law requests. During this search they located an additional swab from Theresa Fusco; DNA testing was performed on this new evidence, which led to the NCDA's Office consenting to vacate the convictions of all three men.

A



Dated: November 16, 2012
Central Islip, NY



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Attorneys for defendants

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOHN KOGUT,

Plaintiff,

v.

THE COUNTY OF NASSAU, et al.,

Defendants.

06-CV-6695 (JS)(WDW)

JOHN RESTIVO and DENNIS HALSTEAD,

Plaintiff,

v.

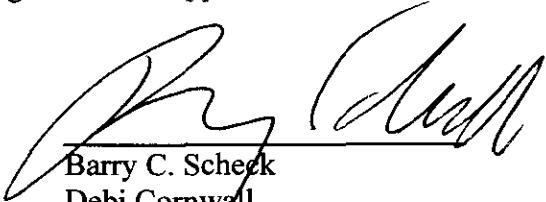
THE COUNTY OF NASSAU, et al.,

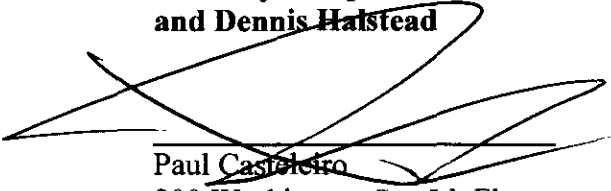
Defendants.

06-CV-6720(JS)(WDW)

STIPULATION

At the beginning of the trial, on or about September 17, 2012, at the request of the Plaintiffs, Detective Hillman searched for the rope depicted in Plaintiffs' Exhibit 169-J and could find neither the rope nor any document reflecting what had happened to it.

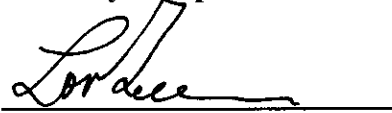

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COURT EXHIBIT

3

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A handwritten signature in black ink, appearing to read "Lou Freeman", is written over a horizontal line.

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Attorneys for defendants

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOHN KOGUT,)	
Plaintiff,)	
)	
v.)	
)	
THE COUNTY OF NASSAU, et al.,)	06-CV-6695 (JS)(WDW)
)	
Defendants.)	
<hr/>		
JOHN RESTIVO and DENNIS HALSTEAD,)	
)	
Plaintiff,)	06-CV-6720(JS)(WDW)
)	
v.)	
)	
THE COUNTY OF NASSAU, et al.,)	
)	
Defendants.)	
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INSTRUCTION

The Nassau County Police Department has no record documenting any investigation of complaints made by attorney Theodore Robinson regarding the interrogation of John Restivo and other witnesses.

CT # 2

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOHN KOGUT,)	
Plaintiff,)	
)	
v.)	
)	
THE COUNTY OF NASSAU, et al.,)	06-CV-6695 (JS)(WDW)
)	
Defendants.)	
<hr/>		
JOHN RESTIVO and DENNIS HALSTEAD,)	
)	
Plaintiff,)	06-CV-6720(JS)(WDW)
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v.)	
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THE COUNTY OF NASSAU, et al.,)	
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Defendants.)	
<hr/>		

INSTRUCTION

The Nassau County Police Department has no record documenting any investigation of complaints made by attorney Theodore Robinson regarding the interrogation of John Restivo and other witnesses.

10/16/2012

YOUR HONOR, 1

ON OCT. 16 AFTER MR. DEMPSEY'S TESTIMONY, IT WAS BROUGHT TO MY ATTENTION BY JUROR'S NUMBER 243, THAT EITHER DURING OR AFTER HIS TESTIMONY, THE PLAINTIFFS (MORE THAN ONE) BECAUSE JUROR 203 SAID "THEY", WERE OBSERVED "MOUTHING WORDS + GIVING THE FINGER TO MR. DEMPSEY". THIS BEHAVIOR WAS NOTICED BY AT LEAST ONE OR MORE JUROR'S.

I PERSONALLY DIDN'T OBSERVE ANY OF THE ABOVE MENTIONED CONDUCT OF THE PLAINTIFFS. NOW I WONDER, IF THEY REACT LIKE THIS TO A MAN WITH A GUN, WHAT WOULD THEIR REACTION BE TO A JUROR IF THIS CASE IS DECIDED AGAINST THEM?

RESPECTFULLY,

JUROR # 1